

OPEN MEETING ITEM

COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



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ARIZONA CORPORATION COMMISSION

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DATE: JULY 25, 2011

DOCKET NO.: T-20421A-11-0023

TO ALL PARTIES:

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUL 25 2011

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[Signature]

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

AZTECH COMMUNICATIONS, LLC
(CC&N/RESELLER/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 3, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 16, 2011 and AUGUST 17, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

[Signature]
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 AZTECH COMMUNICATIONS, LLC TO
10 CANCEL ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE RESOLD LONG
DISTANCE AND FACILITIES-BASED LOCAL
EXCHANGE TELECOMMUNICATION
SERVICES IN MOHAVE COUNTY ARIZONA.

DOCKET NO. T-20421A-11-0023

DECISION NO. _____

ORDER

11 Open Meeting
12 August 16 and 17, 2011
Phoenix, Arizona

13 **BY THE COMMISSION:**

14 Having considered the entire record herein and being fully advised in the premises, the
15 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

16 **FINDINGS OF FACT**

17 1. On January 24, 2011, Aztech Communications, LLC ("Aztech" or "Company") filed
18 with the Commission an application to cancel its Certificate of Convenience and Necessity
19 ("CC&N") to provide resold long distance and facilities-based local exchange telecommunication
20 services in Mohave County, Arizona.¹ Aztech's application states that pursuant to A.A.C. R14-2-
21 1107, on January 11, 2011, Aztech notified its customers of its intent to discontinue service as of
22 February 20, 2011, and that Aztech customers were provided with information on alternative local
23 exchange providers in Mohave County.

24 2. On January 28, 2011, Aztech filed a copy of its application to discontinue service filed
25 with the Federal Communications Commission ("FCC").

26 3. On February 22, 2011, Aztech filed a letter requesting a waiver of the notice
27

28 ¹ Aztech was granted a CC&N to provide the services it now desires to cancel in Decision No. 67750 (April 11, 2005).

1 requirements, as set forth in Decision No. 67750, which required Aztech to notify each of its local
2 exchange customers and the Commission 60 days prior to filing an application to discontinue service
3 pursuant to A.A.C. R14-2-1107.² Aztech's letter states that Aztech provided 30 days prior notice to
4 its 44 customers of its intent to discontinue service; that Aztech has entered into an agreement
5 conditionally³ transferring Aztech's assets to Citizens Utilities Rural Company, Inc., dba Frontier
6 Citizens Utilities Rural ("Frontier"); and that Aztech could face financial distress if the Commission
7 finds that Aztech must forfeit its bond for failing to provide 60 days advance notice to the
8 Commission and its local exchange customers. Aztech also states that during discussions with the
9 Commission's Utilities Division ("Staff") regarding the application, Staff objects to Aztech providing
10 only 30 day advance notice to customers and the Commission.

11 4. On February 28, 2011, Aztech filed an Affidavit of Publication showing that notice of
12 the above-captioned application was published on February 13, 2011, in the *Mohave Valley Daily*
13 *News*, a six times weekly newspaper of general circulation in Mohave County, Arizona.

14 5. On March 16, 2011, by Procedural Order, Aztech was required to file, by April 16,
15 2011, an affidavit explaining whether Aztech had ceased providing telecommunication services to its
16 Arizona customers; identifying who is providing local exchange service to each of Aztech's
17 customers; and if applicable, the date Aztech's services had ceased and the new provider's service
18 commenced. The Procedural Order further stated that Aztech's failure to file the above referenced
19 affidavit could result in a forfeiture of its performance bond on file with the Commission.

20 6. On April 14, 2011, Aztech filed the Affidavit of John Brandon Hoover Requesting
21 Non-Forfeiture of Performance Bond of Aztech. Mr. Hoover's affidavit states he is chief operating
22 officer for the Company and is authorized to act on the Company's behalf. The affidavit states that in
23 December 2010, the owners of Aztech decided to close the business; on January 11, 2011, Aztech
24 sent notice to its customers that it would be closing the business effective February 20, 2011; and on
25 January 26, 2011, Staff notified the Company that pursuant to Decision No. 67750, 60 days advance
26

27 ² Decision No. 67750 also provided that the failure to file the required notice should result in a forfeiture of Aztech's
performance bond on file with Commission.

28 ³ Aztech states the agreement with Frontier is conditioned upon Commission approval of the transfer of assets and
service. (Aztech letter dated February 22, 2011.)

1 notice of the Company's intent to discontinue service to the Commission and to Aztech's local
2 exchange customers was required. According to the affidavit, Staff asked the Company to pull the
3 above-captioned application and to provide 60 days advance notice to its customers before ceasing
4 operations. Mr. Hoover states that the Company informed Staff it could not continue operations
5 beyond March 1, 2011, but that it had made arrangements with Frontier, an incumbent local exchange
6 carrier, to provide service to Aztech's remaining 44 customers as of March 1, 2011, and that during
7 the transfer, none of its customers were without service. Aztech reiterated its request for waiver of the
8 60 day advance notice requirement and that the Commission not require forfeiture of its performance
9 bond.

10 7. On May 20, 2011, the Commission's Utilities Division Staff ("Staff") filed a Staff
11 Report in this matter recommending approval of Aztech's application to cancel its CC&N contingent
12 upon compliance with the following conditions:

- 13 a. Aztech file with Docket Control, within 30 days of this Decision, a notice to
14 the Commission attesting that all of its customers, as of the date of the
15 Decision in this matter, have satisfactorily transferred service to Frontier or
16 have found alternative telecommunication services.
- 17 b. Aztech file with Docket Control, within 60 days of this Decision, a notice to
18 the Commission attesting that all deposits and prepayments have been returned
19 to corresponding customers.

20 8. Staff further recommends that the cancellation not become effective until a decision is
21 issued by the Commission authorizing such cancellation.

22 9. Staff states through a customer inquiry it became aware of Aztech's intention to cancel
23 its telecommunication services; that on January 12, 2011, Aztech informed its customers via a letter
24 that their telecommunications services would cease effective February 20, 2011; and that due to a
25 misunderstanding of Commission rule (A.A.C. R14-2-1107) Aztech's customer notice was issued
26 before providing the Commission and Staff with the required 60 days advance notice to discontinue
27 service.

28 10. Staff states that immediately upon becoming aware of Aztech's intent to cancel its
services, Staff, Aztech, and Frontier initiated discussions whereby Aztech agreed to reissue its
customer notice revising its termination date to March 1, 2011. Aztech also agreed that prior to

1 issuing the revised customer notice, it would ensure that Frontier could serve Aztech's remaining
2 customers. Staff also reports that the discussions included the expected lease and/or transfer of
3 Aztech's telecommunication assets to Frontier.⁴

4 11. Staff states that given the limited number of customers served by Aztech and the
5 cooperation exhibited by the Company in facilitating the transfer of customers to Frontier, Staff
6 supports a waiver of the notice requirement contained in Decision No. 67750 and A.A.C. R14-2-
7 1107.

8 12. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

9 CONCLUSIONS OF LAW

10 1. Aztech is a public service corporation within the meaning of Article XV of the
11 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

12 2. The Commission has jurisdiction over Aztech and the subject matter of the application
13 to cancel the Company's CC&N.

14 3. The cancellation of Aztech's CC&N is in the public interest.

15 4. Staff's recommendations are reasonable and should be adopted.

16 ORDER

17 IT IS THEREFORE ORDERED that the application of Aztech Communications, LLC for the
18 cancellation of its Certificate of Convenience and Necessity to provide resold long distance and
19 facilities-based local exchange telecommunication services in Arizona shall be cancelled upon
20 compliance with the following ordering paragraphs.

21 IT IS FURTHER ORDERED that Aztech Communications, LLC shall file with Docket
22 Control, as a compliance item in this docket, within 30 days of the effective date of this Decision,
23 notice to the Commission attesting that all of its customers, as of the date of this Decision, have been
24 satisfactorily transferred to Frontier or have found alternative telecommunication services.

25 _____
26 ⁴ On March 2, 2011, Aztech and Frontier filed a joint application with the Commission requesting approval for Aztech to
27 lease certain fiber optic telecommunication assets to Frontier in connection with a lease agreement executed between the
28 parties on February 28, 2011. The application stated that Aztech provides service to a development known as the El Rio
Subdivision (including the El Rio Golf & Country Club, business park, residences, and golf course). Because of Aztech's
intent to discontinue service to the El Rio Subdivision, Aztech stated that Frontier had begun to service the El Rio
Subdivision through the use of the facilities that are the subject of lease agreement. On May 4, 2011, the Commission
issued Decision No. 72299 granting approval of the application.

IT IS FURTHER ORDERED that Aztech Communications, LLC shall file with Docket Control, within 60 days of the effective date of this Decision, notice attesting that all customer deposits and/or prepayments have been returned to the corresponding customers.

IT IS FURTHER ORDERED that Aztech Communications, LLC is hereby granted a waiver of the notice requirement contained in Decision No. 67750 and A.A.C. R14-2-1107.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:db

1 SERVICE LIST FOR: AZTECH COMMUNICATIONS, LLC

2 DOCKET NO.: T-20421A-11-0023

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